U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-D-T-, INC.

DATE: JULY 16, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of information technology services, seeks to employ the Beneficiary as a senior software developer. It requests her classification under the second-preference, immigrant category as a member of the professions holding an advanced degree or its equivalent. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign national with a master's degree, or a bachelor's degree and five years of experience, for lawful permanent resident status.

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish the Beneficiary's possession of a degree in a field of study acceptable for the offered position.

On appeal, the Petitioner asserts that the position's acceptable fields of "Computer Science" and "Science" encompass computer applications, the field of the Beneficiary's degree.

Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, an employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL certifies a position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the minimum requirements of a certified position and whether a petitioner can pay a proffered wage. If USCIS approves a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE REQUIRED EDUCATION

A petitioner must establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements.[1] *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS examines the job-offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the primary educational requirement of the offered position of senior software developer as a U.S. master's degree or a foreign equivalent degree in "Computer Science, Mathematics, Engineering, Science or Business/Commerce." Asked on the certification whether an alternate field of study is acceptable, the Petitioner answered "No."

On the labor certification, the Beneficiary attested that, by the petition's priority date, an Indian university awarded her a master of computer applications degree. The Petitioner provided a copy of her diploma and two, independent evaluations of the credential. One evaluation included a report from the an online source of foreign educational evaluations.[2] The evaluations and the report all conclude that the Beneficiary's Indian degree equates to a U.S. master's degree in "computer applications."[3]

Under the plain language of the labor certification, however, the Beneficiary lacks a degree in an acceptable field of study. As the Director found, the field of computer applications, as stated on the Beneficiary's degree, the evaluations, and the report, does not match any of the disciplines the Petitioner listed as acceptable on the certification.

Citing one of the evaluations, the Petitioner argues that computer applications constitutes a "sub-discipline" of the listed fields of "Computer Science" and "Science." The Petitioner states:

> One can specialize, for example, in Greek and Roman History, Medieval History, Chinese History or American History. Nobody would seriously contend that anybody who chose to specialize in one of these periods did not earn a degree in the field of

[1] This petition's priority date is August 17, 2016, the date the DOL received the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[3] Neither the evaluations nor the report cite examples of U.S. universities offering master's degrees in computer applications.

> History. Similarly, one who has specialized in Computer Applications has surely earned a degree in the field of Computer Science.

The Petitioner, however, did not indicate its acceptance of sub-disciplines or other fields related to the disciplines listed on the labor certification. The job requirements on a certification "as described, must represent the employer's actual minimum requirements for the job opportunity." 20 C.F.R. § 656.17(i)(1); *see also Matter of JP Morgan Chase & Co.*, 2011-PER-01164, 2012 WL 3091676 *3 (BALCA July 25, 2012) (holding that "[t]he onus is on the Employer to make it perfectly clear . . . what the Employer seeks").

Here, the labor certification does not support the Petitioner's claimed acceptance of a master's degree in computer applications. As previously indicated, that field does not match any of the disciplines listed as acceptable on the certification. The Petitioner also stated that it will not accept degrees in alternate fields. The certification's omission of computer applications as an alternate discipline therefore indicates the unacceptability of a degree in computer applications. *See SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005 *7 (D.Or. Nov. 30, 2006) (holding that "where the plain language of [labor certification] requirements does not support the petitioner's asserted intent, the agency does not err in applying the requirements as written"). The Petitioner has not shown that the Beneficiary has a U.S. degree in one of the required fields or the foreign equivalent of a degree in one of the required fields.

Thus, based on the plain language of the labor certification, the record does not establish the Beneficiary's possession of the minimum education required for the offered position.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of senior software developer as $101,712 a year. As previously noted, the petition's priority date is August 17, 2016. As of the appeal's filing, required evidence of the Petitioner's ability to pay the proffered wage in 2017 was not yet available. We will therefore consider the Petitioner's ability to pay in only 2016, the year of the petition's priority date.

The Petitioner submitted copies of its audited financial statements for 2016. The statements reflect amounts of net income and net current assets exceeding the proffered wage. USCIS records, however, indicate the Petitioner's recent filings of multiple immigrant petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here

must therefore demonstrate its ability to pay the combined proffered wages of petitions that were pending or approved as of, or filed after, this petition's priority date of August 17, 2016, until their beneficiaries obtained lawful permanent residence.[4] *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of its grant, a petitioner did not demonstrate its ability to pay multiple beneficiaries).

In any future filings in this matter, the Petitioner must provide the proffered wages and priority dates of its other sponsored beneficiaries. The Petitioner should also submit evidence of any wages it paid to corresponding beneficiaries during the time period in question. The Petitioner may also submit additional evidence of its ability to pay, including evidence supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of a degree in a field of study acceptable for the offered petition. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of M-D-T-, Inc.*, ID# 1303491 (AAO July 16, 2018)

[4] The Petitioner need not demonstrate its ability to pay proffered wages of petitions that were denied, withdrawn, or revoked without a pending appeal or motion. It also need not demonstrate its ability to pay proffered wages before petitions' priority dates or after their beneficiaries obtained lawful permanent residence.